

SENATE BILL No. 493

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2; IC 12-10; IC 12-15-8.5-0.5.

Synopsis: Home and community based services. Establishes the CHOICE account for the purpose of providing services under the community and home options to institutional care for the elderly and disabled program (CHOICE). Requires the office of the secretary of family and social services to establish a home and community based long term care service program and establishes eligibility for the program. Requires the office of Medicaid policy and planning (OMPP) to apply for: (1) a waiver to exempt individuals using Medicaid home and community based waiver services from lien recovery; (2) a waiver to amend the aged and disabled waiver to include any service offered by the community and home options to institutional care for the elderly and disabled (CHOICE) program; (3) a waiver to amend Medicaid waivers to include spousal impoverishment protection provisions that are at least at the level of those offered to health facility residents; (4) a waiver to amend the state Medicaid plan to include personal care services; and (5) a waiver to have funds follow an individual transitioning from a health facility to home and community based services. Specifies protections an individual receiving Medicaid waiver services must have. Requires the office of the secretary of family and social services to have self-directed care options available for CHOICE individuals and Medicaid waiver individuals who choose self-directed care services. Requires the area agencies on aging to determine CHOICE eligibility for individuals on the CHOICE waiting list and establishes time frames for the determinations. Requires an individual eligible for CHOICE, beginning July 1, 2005, to receive CHOICE services within 60 days. Establishes the home and community based long term care transition account.

Effective: Upon passage; July 1, 2003.

Server

January 23, 2003, read first time and referred to Committee on Health and Provider Services.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 493

A BILL FOR AN ACT to amend the Indiana Code concerning human services and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-7-2-1.3 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.3. "Activities of daily
- 3 living", for purposes of IC 12-10-10 and IC 12-10-11.5, has the
- 4 meaning set forth in IC 12-10-10-1.5.
- 5 SECTION 2. IC 12-7-2-118.8 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2003]: **Sec. 118.8. "Institution", for purposes**
- 8 **of IC 12-10-11.5, has the meaning set forth in IC 12-10-11.5-1.**
- 9 SECTION 3. IC 12-10-10-12 IS ADDED TO THE INDIANA
- 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2003]: **Sec. 12. (a) The CHOICE account**
- 12 **within the state general fund is established for the purpose of**
- 13 **providing services under this chapter. The account shall be**
- 14 **administered by the office of the secretary of family and social**
- 15 **services.**
- 16 **(b) Money in the account is annually appropriated for the**
- 17 **purposes of the account.**



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(c) The expenses of administering the account shall be paid from money in the account.

(d) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(e) Money appropriated to this account:

(1) may be used only to provide services for the program under this chapter; and

(2) may not be used to fund a Medicaid waiver.

SECTION 4. IC 12-10-11.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 11.5. Long Term Care Services

Sec. 1. As used in this chapter, "institution" means any of the following:

(1) A health facility licensed under IC 16-28.

(2) An intermediate care facility for the mentally retarded.

Sec. 2. (a) The office of the secretary of family and social services shall establish a comprehensive program of home and community based long term care services to provide eligible individuals with care that is not more costly than services provided to similarly situated individuals who reside in institutions.

(b) The program of home and community based long term care services must insure the availability of appropriate and cost effective alternatives to institutional care that an individual is entitled to under the federal Medicaid program.

Sec. 3. An individual who has resided in the state for at least ninety (90) days shall be eligible for the home and community based long term care services program if the individual:

(1) participates in the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6; or

(2) meets the following requirements:

(A) Has an income of not more than three hundred percent (300%) of the federal Supplemental Security Income level.

(B) Is unable to perform at least three (3) activities of daily living determined by an assessment conducted by an area agency on aging case manager or any other agency the state has contracted with to perform assessments.

(C) Is at risk of being placed in an institution.

Sec. 4. The state shall provide access to the following long term care services that are appropriate and needed for an individual who is eligible for these services under this chapter:

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(1) Any home and community based service that is available through:

- (A) the community and home options to institutional care for the elderly and disabled program; or
- (B) any state Medicaid waiver.

(2) Personal care services.

(3) Self-directed care.

(4) Assisted living.

(5) Adult foster care.

(6) Adult day care services.

(7) The provision of durable medical equipment or devices.

(8) Housing modifications.

(9) Adaptive medical equipment and devices.

(10) Adaptive nonmedical equipment and devices.

(11) Any other service that is necessary to maintain an individual in a home and community based setting, including the following:

(A) Transportation services.

(B) Housing.

(C) Education.

(D) Workforce development.

Sec. 5. (a) The office of the secretary of family and social services shall annually determine any state savings generated by home and community based services under this chapter by reducing the use of institutional care.

(b) Savings determined under subsection (a) shall be used to fund the state's share of additional home and community based Medicaid waiver slots.

SECTION 5. IC 12-15-8.5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 0.5. (a) Except as provided in subsection (b), this chapter does not apply to an individual who receives home and community based services under a Medicaid waiver that allows a lien exemption.

(b) The office may apply a lien to an individual who fraudulently received home and community based services under a Medicaid waiver.

SECTION 6. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "board" refers to the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

(b) As used in this SECTION, "office" refers to the office of



1 Medicaid policy and planning established by IC 12-8-6-1.

2 (c) As used in this SECTION, "waiver" refers to the aged and
3 disabled Medicaid waiver.

4 (d) Before September 1, 2003, the office shall discuss and review
5 any amendment to the waiver required under this SECTION with
6 the board.

7 (e) Before October 1, 2003, the office shall apply to the United
8 States Department of Health and Human Services to amend the
9 waiver to include in the waiver any service that is offered under the
10 community and home options to institutional care for the elderly
11 and disabled (CHOICE) program established by IC 12-10-10-6. A
12 service provided under this subsection may not be more restrictive
13 than the corresponding service provided under IC 12-10-10.

14 (f) The office may not implement the waiver until the office files
15 an affidavit with the governor attesting that the amendment to the
16 waiver applied for under this SECTION is in effect. The office shall
17 file the affidavit under this subsection not later than five (5) days
18 after the office is notified that the waiver is approved.

19 (g) If the office receives approval for the amendment to the
20 waiver under this SECTION from the United States Department
21 of Health and Human Services and the governor receives the
22 affidavit filed under subsection (f), the office shall implement the
23 waiver not more than sixty (60) days after the governor receives
24 the affidavit.

25 (h) Before January 1, 2004, the office shall meet with the board
26 to discuss any changes to other state Medicaid waivers that are
27 necessary to provide services that may not be more restrictive than
28 the services provided under the CHOICE program. The office shall
29 recommend the changes determined necessary by this subsection
30 to the governor.

31 (i) The office may adopt rules under IC 4-22-2 necessary to
32 implement this SECTION.

33 (j) This SECTION expires December 31, 2008.

34 SECTION 7. [EFFECTIVE JULY 1, 2003] (a) As used in this
35 SECTION, "office" refers to the office of Medicaid policy and
36 planning established by IC 12-8-6-1.

37 (b) As used in this SECTION, "waiver" refers to a Medicaid
38 waiver approved by the United States Department of Health and
39 Human Services (42 U.S.C. 1396 et seq.).

40 (c) Before September 1, 2003, the office shall seek approval from
41 the United States Department of Health and Human Services to
42 amend the waiver to modify income eligibility requirements to

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1 include spousal impoverishment protection provisions under 42
2 U.S.C. 1396r-5 that are at least at the level of the spousal
3 impoverishment protections afforded to individuals who reside in
4 health facilities licensed under IC 16-28.

5 (d) The office may not implement the waiver amendments until
6 the office files an affidavit with the governor attesting that the
7 federal waiver amendment applied for under this SECTION is in
8 effect. The office shall file the affidavit under this subsection not
9 later than five (5) days after the office is notified that the waiver
10 amendment is approved.

11 (e) If the United States Department of Health and Human
12 Services approves the waiver amendment requested under this
13 SECTION and the governor receives the affidavit filed under
14 subsection (d), the office shall implement the waiver amendments
15 not more than sixty (60) days after the governor receives the
16 affidavit.

17 (f) The office may adopt rules under IC 4-22-2 necessary to
18 implement this SECTION.

19 (g) This SECTION expires December 31, 2008.

20 SECTION 8. [EFFECTIVE JULY 1, 2003] (a) As used in this
21 SECTION, "office" refers to the office of Medicaid policy and
22 planning established by IC 12-8-6-1.

23 (b) An individual who receives Medicaid services through a
24 Medicaid waiver shall receive the following:

- 25 (1) The development of a care plan addressing the individual's
26 needs.
- 27 (2) Advocacy on behalf of the individual's interests.
- 28 (3) The monitoring of the quality of community and home
29 care services provided to the individual.
- 30 (4) Information and referral services on community and home
31 care services if the individual is eligible for these services.

32 (c) The use by or on behalf of an individual receiving Medicaid
33 waiver services of any of the following services or devices does not
34 make the individual ineligible for services under a Medicaid
35 waiver:

- 36 (1) Skilled nursing assistance.
- 37 (2) Supervised community and home care services, including
38 skilled nursing supervision.
- 39 (3) Adaptive medical equipment and devices.
- 40 (4) Adaptive nonmedical equipment and devices.

41 (d) If necessary to implement this SECTION, the office shall
42 apply to the United States Department of Health and Human

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Services for an amendment to a Medicaid waiver to comply with this SECTION.

(e) If the office applies for a waiver amendment under subsection (d), the office may not implement the waiver amendment until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(f) If the office receives a waiver amendment under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (e), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

(g) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

SECTION 9. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "personal care services" has the meaning set forth in 42 CFR 440.167.

(c) Before July 1, 2004, the office shall apply to the United States Department of Health and Human Services for approval to amend the state Medicaid plan to include personal care services.

(d) The office may not implement the amended state Medicaid plan until the office files an affidavit with the governor attesting that the proposed amendment to the state Medicaid plan applied for under this SECTION was approved. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the proposed amendment is approved.

(e) If the office receives approval of the proposed amendment to the state Medicaid plan under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (d), the office shall implement the amendment not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(g) This SECTION expires December 31, 2008.

SECTION 10. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of the secretary of family and social services established by IC 12-8-1-1.

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(b) Before July 1, 2004, the office shall have self-directed care options services available for:

(1) the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6; and

(2) a Medicaid waiver;

for an eligible individual who chooses self-directed care services.

(c) This SECTION expires December 31, 2006.

SECTION 11. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "CHOICE program" refers to the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6.

(b) Before December 31, 2003, the area agencies on aging shall determine the eligibility for the CHOICE program of an individual who has been on the waiting list for the program before November 1, 2003 and who has not received an eligibility determination for the CHOICE program.

(c) Beginning November 1, 2003, the area agencies on aging shall determine whether an individual who is applying for the CHOICE program and placed on the waiting list for the CHOICE program is eligible for the CHOICE program not more than sixty (60) days after the individual is placed on the waiting list.

(d) Beginning July 1, 2005, an eligible individual under the CHOICE program shall not:

(1) wait on a waiting list for services for more than ninety (90) days; and

(2) be denied services because of funding shortages for the program.

SECTION 12. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "waiver" refers to an Indiana Medicaid waiver approved by the United States Department of Health and Human Services.

(b) Before July 1, 2005, the office shall seek approval from the United States Department of Health and Human Services to amend any Medicaid waiver for home and community based services so that an eligible individual receives services within ninety (90) days after being determined eligible for the services.

(c) The office may not implement the waiver amendment until the office files an affidavit with the governor attesting that the federal waiver amendments applied for under this SECTION are in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver

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1 amendments are approved.

2 (d) If the United States Department of Health and Human
3 Services approves the waiver amendments requested under this
4 SECTION and the governor receives the affidavit filed under
5 subsection (c), the office shall implement the waiver amendments
6 not more than sixty (60) days after the governor receives the
7 affidavit.

8 SECTION 13. [EFFECTIVE JULY 1, 2003] (a) The home and
9 community based long term care transition account within the
10 state general fund is established for the purpose of reducing the
11 overutilization of institutional care and transitioning eligible
12 individuals who would not otherwise receive home and community
13 based long term care services into these services.

14 (b) The account shall be administered by the office of the
15 secretary of family and social services established by IC 12-8-1-1.

16 (c) The expenses of administering the account shall be paid from
17 money in the account.

18 (d) The treasurer of state shall invest the money in the account
19 not currently needed to meet the obligations of the account in the
20 same manner as other public money may be invested. Interest that
21 accrues from these investments shall be deposited in the state
22 general fund.

23 (e) Money in the home and community based long term care
24 transition account is annually appropriated for the purposes of the
25 account. The account must be used for the following:

26 (1) Case management costs incurred by either the office or the
27 area agencies on aging in moving individuals to home and
28 community based care, including eligibility determination
29 costs.

30 (2) The cost of identifying and screening individuals in health
31 facilities licensed under IC 16-28 who may be eligible and
32 appropriate for home and community based services.

33 (3) The cost of placing an individual who is:

34 (A) a resident of a health facility; and

35 (B) determined by the screening process to be eligible and
36 appropriate for home and community based services;
37 into home and community based care, including housing and
38 transportation costs.

39 (f) Money in the account at the end of a state fiscal year does not
40 revert for use for any other purpose in the state general fund.
41 However, any unencumbered amount in the account on July 1,
42 2007, reverts to the state general fund for use for any

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governmental purpose.

(g) The funds appropriated to this account under subsection (e) are in addition to any funds provided to existing programs for home and community based services.

(h) Before December 31 of each year, the office of the secretary of family and social services shall submit a report to the governor and the legislative council on the impact of the account in reducing the state's use of publicly financed institutional care by a health facility licensed under IC 16-28.

(i) Before December 31, 2003, the office of the secretary of family and social services shall recommend to the governor, the budget committee, and the budget agency the amount of money needed in the account in order to meet the account's purposes set forth in this SECTION for the following fiscal years:

(1) July 1, 2004, through June 30, 2005.

(2) July 1, 2005, through June 30, 2006.

(3) July 1, 2006, through June 30, 2007.

(j) Before December 31 of each year, the office of the secretary of family and social services shall submit to the governor, the budget committee, and the budget agency any recommended adjustments to the amount determined in subsection (i) in the amount of money needed for the account to meet the account's purposes for the following fiscal year.

(k) The budget director may approve, after review by the budget committee, the annual amount recommended for the account in subsection (j).

(l) The auditor of state shall transfer the approved amount into the account.

(m) This SECTION expires July 1, 2007.

SECTION 14. [EFFECTIVE UPON PASSAGE] (a) Before December 31, 2003, the secretary of family and social services (IC 12-8-1-2) shall discuss with the community and home options to institutional care for the elderly and disabled (CHOICE) board established by IC 12-10-11-1, and with any other agency or individual that the secretary considers appropriate, the establishment of a system of integrated services, including:

(1) transportation;

(2) housing;

(3) education; and

(4) workforce development;

to enhance the viability and availability of home and community based care.

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(b) The secretary shall report to the governor and the budget committee any recommendations for funding these services.

(c) This SECTION expires December 31, 2004.

SECTION 15. [EFFECTIVE UPON PASSAGE] (a) Before December 31, 2003, the secretary of family and social services (IC 12-8-1-2) and the area agencies on aging shall calculate the number of individuals who may reasonably need care under this act, including the following individuals:

(1) An individual receiving home and community based services under the community and home options to institutional care for the elderly and disabled (CHOICE) program established by IC 12-10-10-6.

(2) An individual on the waiting list to receive home and community based services under the CHOICE program.

(3) An individual receiving home and community based services under a state Medicaid waiver.

(4) An individual on a Medicaid waiver waiting list to receive home and community based services.

(5) An individual who receives assisted living services or adult foster care services under a Medicaid waiver.

(6) An individual residing in a health facility licensed under IC 16-28 who may be appropriately served in a home and community based setting.

(b) Before December 31, 2003, the secretary shall report the findings under subsection (a) to the governor, the budget committee, and the budget agency.

(c) This SECTION expires December 31, 2004.

SECTION 16. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "waiver" refers to any state Medicaid waiver approved by the United States Department of Health and Human Services under 42 U.S.C. 1396 et seq.

(c) Except as provided in subsection (d) and before September 1, 2003, the office shall apply to the United States Department of Health and Human Services for approval of a waiver to exempt any individual who receives home and community based services under a Medicaid waiver from a lien and estate recovery action filed by the office under 42 U.S.C. 1396p and IC 12-15-8.5.

(d) The office may file a lien and estate recovery action against an individual described in subsection (c) if the office obtains evidence that the individual provided fraudulent information

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1 concerning eligibility for Medicaid services.

2 (e) The office may not implement the waiver until the office files
3 an affidavit with the governor attesting that the federal waiver
4 applied for under this SECTION is in effect. The office shall file the
5 affidavit under this subsection not later than five (5) days after the
6 office is notified that the waiver is approved.

7 (f) If the office receives a waiver under this SECTION from the
8 United States Department of Health and Human Services and the
9 governor receives the affidavit filed under subsection (e), the office
10 shall implement the waiver not more than sixty (60) days after the
11 governor receives the affidavit.

12 (g) The office may adopt rules under IC 4-22-2 necessary to
13 implement this SECTION.

14 (h) This SECTION expires December 31, 2008.

15 SECTION 17. [EFFECTIVE JULY 1, 2003] (a) As used in this
16 SECTION, "health facility" refers to a facility licensed under
17 IC 16-28.

18 (b) As used in this SECTION, "office" refers to the office of
19 Medicaid policy and planning established by IC 12-8-6-1.

20 (c) As used in this SECTION, "waiver" refers to a home and
21 community based Medicaid waiver approved by the United States
22 Department of Health and Human Services under 42 U.S.C. 1396
23 et seq.

24 (d) Before December 31, 2003, the office shall apply to the
25 United States Department of Health and Human Services for a
26 waiver to allow Medicaid funds used by an individual in a health
27 facility setting to follow the individual if the individual moves from
28 the health facility and transitions into home and community based
29 services provided by a Medicaid waiver.

30 (e) The office may not implement the waiver until the office files
31 an affidavit with the governor attesting that the federal waiver
32 applied for under this SECTION is in effect. The office shall file the
33 affidavit under this subsection not later than five (5) days after the
34 office is notified that the waiver is approved.

35 (f) If the office receives a waiver under this SECTION from the
36 United States Department of Health and Human Services and the
37 governor receives the affidavit filed under subsection (e), the office
38 shall implement the waiver not more than sixty (60) days after the
39 governor receives the affidavit.

40 (g) The office shall report the estimated fiscal impact of the
41 waiver applied for under this SECTION to the governor, the
42 budget committee, and the budget agency. The information in the

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1 report shall be included in the office's calculations of the funds
2 needed for the home and community based long term care
3 transition account established by this act.

4 (h) This SECTION expires December 31, 2009.

5 SECTION 18. An emergency is declared for this act.

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